

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MERCEDES HERNANDEZ
Claimant

VS.

IOWA BEEF PACKING, INC.
Respondent
Self-Insured

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Docket No. 245,181

ORDER

Claimant appeals from a Decision entered by Administrative Law Judge Pamela J. Fuller on November 16, 2001. Oral arguments were presented to the Appeals Board on May 14, 2002. Appeals Board member Gary M. Korte recused himself from this proceeding and Stacy Parkinson was appointed Appeals Board Member Pro Tem to serve in his place.

Appearances

Stanley R. Ausemus of Emporia, Kansas, appeared for the claimant. Wendel W. Wurst of Garden City, Kansas appeared for the respondent.

Record and Stipulation

The Appeals Board (Board) considered the record and adopts the stipulations that are listed in the Decision. Although obviously considered by the Administrative Law Judge (ALJ), it should be noted that the record also contains the March 14, 2001 report by Sergio Delgado, M.D., and the other medical records submitted with the Stipulation filed June 27, 2001.

Issues

The ALJ found that claimant suffered a compensable injury to her neck and upper back area on May 7, 1999. Claimant was awarded permanent partial disability compensation based upon the five percent functional impairment rating given by the court ordered independent medical examiner, board certified orthopedic surgeon Sergio Delgado, M.D. Claimant contends her general body disability was more accurately rated by her medical expert, board certified physiatrist Pedro A. Murati, M.D., who is also a board certified independent medical examiner. Dr. Murati rated claimant's functional impairment as a 18% whole person impairment.

Conversely, respondent contends that the ALJ's award should be affirmed in all respects.

The nature and extent of claimant's disability, specifically her impairment of function, is the only issue for Board review.

Findings of Fact and Conclusions of Law

The ALJ found claimant was entitled to a five percent permanent partial general disability award for her work related injury. The Board finds that the ALJ's award should be affirmed. The Board agrees with the analysis of the evidence and law as set forth in Decision and adopts the ALJ's findings, conclusions and orders as its own.

Award

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Decision entered by Administrative Law Judge Pamela J. Fuller dated November 16, 2001, should be, and is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ day of May 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Wendel W. Wurst, Attorney for Respondent and Insurance Carrier
 Stanley R. Ausemus Attorney for Claimant
 Pamela J. Fuller, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director